

## **DRAFT**

### **Service Terms and Conditions**

Motorola, Inc., through its Commercial, Government, and Industrial Solutions Sector ("Motorola"), and the customer named in this Agreement ("Customer"), hereby agree as follows:

#### **Section 1      APPLICABILITY**

These Service Terms and Conditions apply to service contracts whereby Motorola agrees to provide to Customer either (1) maintenance, support and/or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

#### **Section 2      DEFINITIONS AND INTERPRETATION**

"Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions will take precedence over any cover page, and the cover page will take precedence over any attachments, unless the cover page or attachment specifically states otherwise. "Equipment" means the communication equipment that is specified in the attachments or is subsequently added to this Agreement. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

#### **Section 3      ACCEPTANCE**

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement will become binding only when accepted in writing by Motorola. The term of this Agreement will begin on the "Start Date" indicated in this Agreement.

#### **Section 4      SCOPE OF SERVICES**

4.1. Motorola will provide the Services described in this Agreement or in a more detailed Statement of Work or other attachment. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for such services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be Serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for such additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for such Equipment will terminate at the end of the month in which Motorola receives such written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's opinion, be properly or economically serviced for any reason including excessive wear, unavailability of parts, the state of technology, or practical infeasibility, Motorola may modify the scope of Services related to such Equipment; remove such Equipment from the Agreement; or increase the price to Service such Equipment.

4.7. Customer must promptly notify Motorola directly of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

## **Section 5 EXCLUDED SERVICES**

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries, magnetic tapes, etc.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by such transmission medium.

## **Section 6 TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for such charges and expenses.

## **Section 7 CUSTOMER CONTACT**

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

## **Section 8 PAYMENT**

Unless alternative payment terms are specifically stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer agrees to reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

## **Section 9 WARRANTY**

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days following completion of those Services. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **Section 10     DEFAULT/TERMINATION**

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

## **Section 11     LIMITATION OF LIABILITY**

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the previous twelve (12) months of Service provided under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT TO THE FULL EXTENT SUCH DAMAGES MAY BE DISCLAIMED BY LAW, MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT.** Except for money due upon an open account, no action may be brought for a breach of this Agreement more than one (1) year after the accrual of such cause of action. This limitation of liability will survive the expiration or termination of this Agreement.

## **Section 12     EXCLUSIVE TERMS AND CONDITIONS**

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an inadvertent omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

## **Section 13     PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS**

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any such information or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

#### **Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS**

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by such agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

#### **Section 15 COVENANT NOT TO EMPLOY**

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it shall be modified as necessary to conform to such law.

#### **Section 16 MATERIALS, TOOLS AND EQUIPMENT**

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to such property, and return it to Motorola upon request. Such property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

#### **Section 17 GENERAL TERMS**

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes such as strikes, material shortages, or acts of God that are beyond that party's reasonable control.

17.5. Motorola may assign its rights and obligations, and may subcontract any portion of its performance, under this Agreement.

17.6. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.7. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for such services on a time and materials basis at Motorola's then effective hourly rates.

## CITY OF SUNNYVALE STATEMENT OF WORK

The following conditions or clarifications are included under the service agreement.

1. Twenty-four (24) hour coverage, with one-hour response, will be provided on the Public Safety infrastructure and Public Works infrastructure (described in detailed equipment list and including, but not limited to, the following components: antenna and line systems, base stations, and voting receivers), dispatch positions including computing equipment and recorders, master clock, remotes at fire stations, uninterruptible power systems at fire stations, Zetron fire alerting system, fire apparatus, Rescue 2 and Incident Command vehicle. This basically covers all fixed station equipment and certain vehicle units.

Additionally, 24-hour coverage will be provided for a maximum of any three (3) Public Safety mobile radios per month. Beyond these 3 mobile radios, service required outside normal work hours for Public Safety mobile radios will be charged at the current hourly labor rate with a minimum of 2 hours (parts are included).

The remaining equipment will be covered on a normal 5-day, 40-hour workweek. Further, a Motorola service engineer will be assigned to the City of Sunnyvale from 8:30 a.m. to 4:30 p.m., Monday through Friday (except weekends and holidays) to determine the status of all equipment, take corrective action as necessary, and ensure routine trouble reports from the previous night or weekend are cleared.

2. All parts, labor, travel, test equipment and tools to provide necessary service will be provided at the cost of Motorola. Sufficient parts stock will be available both locally and on emergency call from Motorola Parts Department to keep the system downtime to a minimum.
3. Total preventive maintenance will be performed on all equipment. Preventive maintenance is defined to be the inspection of all equipment listed on the detailed schedule to see that the equipment is working properly and is not in a condition where it will cease to function properly during the term of the maintenance contract. The cost of all time and material charges for necessary repairs and replacement to be borne by Motorola, Inc. All fixed equipment will receive two preventive maintenance (PM) inspections annually. Mobile radios, portable radios and pager equipment will receive annual PMs. The City's Information Technology Department will schedule and coordinate the PMs with Motorola to minimize the impact on operations.

Note: Antennas for portable radios and mobile equipment are not included as part of the service agreement. These items will be invoiced as above-contract items to the City.

4. Mobile radio, portable radio and pager equipment repairs will be attempted at the City of Sunnyvale site whenever possible. If the units are not repaired on-site, a Motorola engineer will ship the mobile, portable or pager equipment to the Motorola depot, at Motorola's cost, for repair. Turnaround time for mobile radios, portable radios, and pager equipment will not exceed five (5) working days under normal conditions. Exceptions to normal conditions include, but are not limited to, the following:
  - a. parts that are no longer manufactured, or
  - b. parts that are not regularly stocked by Motorola because the part does not normally fail.

In the event that parts are no longer manufactured due to equipment age, Motorola will notify the City and make recommendation for replacement. In the event that shipment of non-stocked parts is delayed beyond thirty (30) days from the date order is placed, the service engineer will escalate the situation to Motorola service management for intervention and resolution.

The City will not be charged for the repair or replacement of broken clips on pagers or of broken clips, speaker microphones or microphone cords on portable radios.

5. The maintenance program does not include costs for damage to equipment through physical abuse or Acts of God. When Motorola determines that repair of an item is necessitated by physical damage or abuse, approval should be obtained from the Manager of Information Technology Services before proceeding. Any such above-contract charges incurred without prior approval of the City will not be valid.
6. The external connections to the system include, but are not limited to, the following items: (a) tape recorder, (b) CLETS data system, (c) City's computer network, and (d) leased line telephone equipment. This agreement includes maintenance and analysis up to the respective equipment or modems of these external systems. The City will maintain any necessary contracts with responsible individuals or vendors for these external systems.
7. Labor rates will remain firm for the time period of this contract. These rates shall be in effect for all above-contract costs such as those discussed in Paragraph 5. Labor will be charged at the rate of \$110.00 per hour straight time and at \$165.00 per hour overtime. Materials cost is to be charged at prevailing Motorola suggested retail rate. Quantity purchase discounts will be available by quote.

8. Mobile radio and data removals and installations shall be billed at the following pre-determined flat rates.

Description	Public Safety Vehicles	Non-Public Safety Vehicles
Removal Only	\$200.00 each	\$80.00 each
Installation Only	\$300.00 each	\$150.00 each
Combined Removal/Installation (Change-Out)	\$500.00 each	\$230.00 each
Check-out, Certification of City performed installation or change-out	\$100.00 each	\$50.00 each

Flat rate includes labor and installation hardware and parts except disguise antennas and hidden foot-mic switches for undercover units. The City will issue a separate purchase order for removals and installations.

Standard turnaround time for removals and installations shall be 30 calendar days of receipt of request for work from the Information Technology Department.

9. The City may add or delete units to or from this service agreement as new equipment is acquired and comes off warranty or as equipment is retired from service. Adjustments to the agreement payment amount will be made at the unit prices established in the agreement. If a price is not established, new equipment maintenance prices will be established through negotiation or from Motorola's published rate sheet.
10. Continuous, up-to-date training of the Motorola service personnel will be provided enabling them to keep current of technological changes. In addition, cross-familiarization training will be conducted to ensure the two-way radio technicians are capable of isolating failures associated with the data systems portion of the total communications system to assist the data service technician in resolving the failure.
11. All administrative and management information and documentation relating to the level of system performance and status of maintenance will be maintained by Motorola service personnel and will be available for review by City staff.
12. Motorola will make recommendations for the deletion and/or replacement of equipment that is beyond repair for reliable usage in a public safety environment.
13. Motorola will guarantee that the rates listed on the Service Agreement will be in effect during the term of this Agreement.
14. Payment is due within thirty (30) days of the invoice date.

**MOTOROLA**

Ver. 4.7 Build 1000

# SERVICE AGREEMENT

Attn: National Service Support  
 1307 East Algonquin Road  
 Schaumburg, IL 60196  
 (800) 247-2346

Date: 4/30/2004Agreement Order # : 0603034080991Supersedes Agreement #(s) : „Required P.O.: NoCustomer # : 1011862704Bill to Tag # : 0001Contract Start Date: 07/01/2004Contract End Date: 06/30/2005

Anniversary Date: \_\_\_\_\_

Payment Cycle: QuarterlyTax Exempt: No

PO # : \_\_\_\_\_

Company Name: Sunnyvale, City of

Attn: \_\_\_\_\_

Billing Address: PO Box 3707City, State, Zip: Sunnyvale, CA 94088Customer Contact: Marilyn CranePhone: 408-730-7557

Fax: \_\_\_\_\_

Qty	Model/Option	Description	Monthly Ext	Extended
	SVC02SVC0030	SP - Local Repair with OnSite Response	\$ 5,967.54	\$ 71,610.48
		PUBLIC SAFETY INFRASTRUCTURE		
2		MTR2000		
4		ANTENNA & LINE SYSTEM DPS/HQ/CORP YD		
2		ANTENNA & LINE SYSTEM CORP YD 8X5		
17		ANTENNA CAVITY FILTERS		
1		DESTRAC BASE-EOC		
1		BASE DESTRAC LB BASE (LAWNET) DPS HQ		
2		DIGITAC (PW) 8X5		
4		DIGITAC CHS 1-4 DPS HQ		
1		FIRE BLUE BASE (MSR2000) DPS HQ		
1		FIRE WHITE BASE (MSR2000) DPS HQ		
1		MAXTRAC LB BASE W/ADAPT DPS HQ		
1		MODEM 100 ENCODER DPS HQ		
2		MOSCAD DPS HQ/CORP YRD		
1		PHONE INTERFACE/PAGING DPS HQ		
8		QUANTAR CH 1-4(MAIN & BACKUP) DPS HQ/CORP YRD		
4		QUANTAR DPS HQ 8X5		
9		RX MULTICOUPLERS-VARIOUS & TX COMBINER DPS HQ/CORP		
1		BACKUP POWER UPS 5.3 KVA/CORP YRD		
6		GOLD ELITE OPS POSITION		
1		GOLD ELITE OPS POS		
	SVC01SVC2011	SP - Dispatch Service	\$ 132.74	\$ 1,592.88
1		DISPATCH THROUGH SYSTEM SUPPORT CENTER		
	SVC02SVC0015	SP - Subscriber Repair - Local	\$ 66.49	\$ 797.88
		PUBLIC WORKS MOBILES		
4		MAXTRAC		
3		SPECTRA MOBILES		
	SVC02SVC0015	SP - Subscriber Repair - Local	\$ 1,101.09	\$ 13,213.08
		PUBLIC SAFETY MOBILES		
79		SPECTRA MOBILES		
18		MCS2000 MOBILES		
7		SPECTRA MOTORCYCLE MOBILES		
1		MCS2000 MOBILE (AMR)		
	SVC02SVC0016	SP - Paging Repair - Field	\$ 40.25	\$ 483.00
		PUBLIC SERVICES PAGERS		
7		MINITOR PAGERS		
	SVC02SVC0030	SP - Local Repair with OnSite Response	\$ 4,337.36	\$ 52,048.32
		PUBLIC SERVICE PORTABLES/BATTERIES/HT/MTS		
9		BATTERIES HT/MTS		
208		MTS PORTABLES		
136		HT1000 PORTABLES		
3		XTS3000 PORTABLES		
2		VISAR		
	SVC02SVC0030	SP - Local Repair with OnSite Response	\$ 338.18	\$ 4,058.16



		ZETRON M6, ZETRON M26, & CONSOLETTTE		
8		ZETRON M6		
1		ZETRON M26		
2		CONSOLETTES		
	SVC01SVC2007	SP - OnSite Infrastructure Response	\$ 2,822.94	\$ 33,875.28
		PUBLIC SAFETY INFRASTRUCTURE		
6		COMM CENMTRA COM OP POSITIONS DPS HQ		
12		CONTROL STA-STAT ALT POS 2		
1		MASTER CLOCK DPS HQ		
2		STAT ALT POS 2&3		
6		ALARM INTERFACE		
6		AUDIO AMP		
12		FIRE REMOTE FS 1,2,3,4,5,6		
20		RECEIVER CH 1-4 FS 3,4,5,6 7 VARGUS		
1		REMOTE EOC		
10		PW VOTING RECEIVERS		
2		RF FILTER		
4		UPS 2.1KVA FS STA 3,4,5,6		
14		DAVE CLARK COM 500 INTERFACE		
	SVC02SVC0028	SP - Maintenance Services	\$ 25.32	\$ 303.84
1		MONTHLY ADJUSTMENT FOR ADD ON EQUIP 7 HT1000s		

SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS		SUBTOTAL - RECURRING SERVICES	\$ 14,831.91	\$ 177,982.92
		SUBTOTAL - ONE-TIME EVENT SERVICES		\$ -
		TOTAL	\$ 14,831.91	\$ 177,982.92

	TAXES	\$0.00	\$0.00
	GRAND TOTAL	\$ 14,831.91	\$ 177,982.92
	THIS SERVICE AMOUNT IS SUBJECT TO STATE & LOCAL TAXING JURISDICTIONS, TO BE VERIFIED BY MOTOROLA.		

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms & Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference	SUBCONTRACTOR(S)	CITY	STATE
	Motorola - California Region FSO	Van Nuys	CA
	Motorola - SSC Call Center Operations	Schaumburg	IL

AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
Marilyn Crane		
CUSTOMER (PRINT NAME)	Customer Support Manager	
MOTOROLA REPRESENTATIVE (SIGNATURE)	TITLE	DATE
Lisa DeCurtins	858-404-4374	848-404-2589
MOTOROLA REPRESENTATIVE (PRINT NAME)	PHONE	FAX